

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1393 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

B M BAGATHARIA

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR JF SHAH for Petitioner
MR ND NANAVATI for Respondent No. 1
MR VH DESAI for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 31/03/2000

ORAL JUDGEMENT

Learned Counsel for the respondents no.1 & 2 on
instructions states that the respondent no.3 has expired
during the pendency of the petition. In view of this

statement, learned Counsel for the petitioner seeks permission to delete the name of the respondent no.3 from the petition. Permission as prayed for is granted. The name of the respondent no.3 stands deleted from the petition.

By means of filing this petition under Article 227 of the Constitution, the petitioner has prayed to call for the records and proceedings of Appeal No. 270 of 1985 decided by Gujarat Civil Services Tribunal, Gandhinagar on January 25, 1988 and set aside the said judgment. The petitioner has further prayed to direct the respondent no.1 to consider the petitioner for promotion to the post of School Health Assistant from the date on which deleted deceased respondent no.3 was promoted to the said post and give all incidental benefits including monetary benefits flowing from the deemed date of promotion.

2. The petitioner had initially joined as a Vaccinator through Employment Exchange by an order dated October 1, 1973. He was relieved from the said post by an order dated March 15, 1976, as regularly selected vaccinators through District Panchayat Service Selection Committee were available for appointment. The petitioner was thereafter appointed as a Talati-cum-Mantri by an order dated May 31, 1976. In the said order it was stipulated that his services as a vaccinator would be counted for the purpose of leave and pension, but not for the purpose of seniority. Since the petitioner failed to pass written examination for the post of Talati-cum-Mantri, he was relieved from that post with effect from December 31, 1977 and was re-appointed as a vaccinator on purely temporary basis. It may be mentioned that deleted deceased respondent no.3 had joined as a vaccinator with effect from September 11, 1970 and there was no break in his service, but he was never selected by the District Panchayat Service Selection Committee. It is to be noted that District Panchayat Service Selection Committee is constituted under section 211 of the Gujarat Panchayats Act, 1961. The District Panchayat Service Selection Committee, Rajkot had to recruit vaccinators. The petitioner as well as deleted deceased respondent no.3 with other candidates had appeared before District Panchayat Service Selection Committee, Rajkot for their selection. On the basis of oral interview conducted by the Committee, the petitioner as well as deleted deceased respondent no.3 and other candidates were selected. In exercise of powers conferred by section 323 of the Gujarat Panchyats Act, 1961, Government of Gujarat has made Rules called,

"The Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964. As required by Rule 3(2)(c) of the said Rules, District Panchayat Service Selection Committee, Rajkot had forwarded to the Panchayat concerned names of the candidates selected according to the result of the interview arranged in the order of merit and preference. Annexure-A to the petition indicates that name of the petitioner was mentioned in the said list at serial no.2; whereas name of deleted deceased respondent no.3 was mentioned at serial no.7. The appointments of both- the petitioner as well as the deceased respondent no.3 were regularised by the District Panchayat, Rajkot vide order dated March 23, 1982, wherein also name of the petitioner occurred at serial no.2; whereas name of deleted deceased respondent no.3 was at serial no.7. The deceased respondent no.3 came to be promoted to the next higher post of School Health Assistant w.e.f. April 12, 1985, but the petitioner was not promoted, though he was shown senior to deceased respondent no.3 in the communication which was forwarded by the District Panchayat Service Selection Committee as well as in order dated March 23, 1982 which was passed by the District Panchayat, Rajkot. Under the circumstances, the petitioner filed Appeal No. 270/85 before the Gujarat Civil Services Tribunal, Gandhinagar claiming deemed date of promotion. The appeal is dismissed by the Tribunal vide judgment dated January 25, 1988, giving rise to present petition.

3. What is claimed by the petitioner is that selection to the post of vaccinator by way of direct selection of the petitioner as well as deleted deceased respondent no.3 was made by the District Panchayat Service Selection Committee, which had determined seniority and, therefore, the petitioner was entitled to be promoted to the post of School Health Assistant atleast on the date on which the deceased respondent no.3 was promoted. According to the petitioner, the Tribunal could not have gone into the question as to whether the Selection Committee had prepared a merit list properly or not and, therefore, the judgment of the Tribunal deserves to be set aside. What is pleaded by the petitioner is that earlier recruitment of the petitioner as well as that of deleted deceased respondent no.3 on the post of vaccinator was irregular and, therefore, earlier services rendered by the deceased respondent no.3 on the post of vaccinator could not have been taken into consideration while giving promotion to the post of School Health Assistant. Under the circumstances, the petitioner has filed present petition and claimed the reliefs to which reference is made earlier.

4. Though this is a petition under Article 227 of the Constitution requesting the Court to exercise supervisory jurisdiction over the Gujarat Civil Services Tribunal, Gandhinagar, the respondents no.1 & 2 have filed reply affidavit through Dr. D.T.Vaghela, Addl. District Health Officer, Rajkot controverting the averments made in the petition. In the reply, it is inter-alia averred that when the petitioner was appointed as a Talati-cum-Mantri by an order dated May 31, 1976, it was specifically stipulated that his earlier services as a vaccinator would be counted for the purpose of leave and pension, but not for the purpose of seniority and as the deceased respondent no.3 had rendered services as a vaccinator since September 11, 1970 till his regular selection by the District Panchayat Service Selection Committee in the year 1982, the respondents no.1 & 2 were justified in treating deleted deceased respondent no.3 as senior to the petitioner in the matter of promotion to the post of School Health Assistant and, therefore, the petition should be dismissed.

5. Mr. J.F.Shah, learned Counsel for the petitioner submitted that in view of provisions of Rule 3(2)(c) of the Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964, it was competent to the District Panchayat Service Selection Committee to forward to the Panchayat concerned names of the petitioner and others after arranging them in order of merit or preference and, therefore, the respondents no.1 & 2 were not justified in treating deleted deceased respondent no.3 as senior to the petitioner. It was submitted that District Panchayat, Rajkot vide its order dated March 23, 1982 had also treated the petitioner as senior to deleted deceased respondent no.3 and, therefore, the petitioner ought to have been promoted to the next higher post atleast on the date on which the deceased respondent no.3 was promoted to the said post. According to the learned Counsel for the petitioner, the Tribunal has no jurisdiction to sit in appeal over the selection made by the District Panchayat Service Selection Committee constituted under section 211 of the Gujarat Panchayats Act, 1961 and, therefore, the Tribunal was not justified in brushing aside the order of merit or preference determined by the Selection Committee on the specious ground that the Selection Committee had not taken into consideration the candidates' experience or even the prescribed qualification regarding passing of Sanitary Inspector's Examination by the candidates. What was stressed was that as per the advertisement, those who had not passed the Sanitary Inspector's Examination, were

also entitled to be called for interview for the post of vaccinator, if the candidates having passed the said examination were not available in sufficient number and, therefore, the Tribunal was not justified in overlooking seniority of the petitioner on the ground that the petitioner had not passed Sanitary Inspector's examination at the time of his selection by the statutory committee. The learned Counsel for the petitioner emphasised that the decision reached by the Tribunal is not only contrary to the provisions of the Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964, but also contrary to the other orders passed by the District Panchayat and, therefore, the petition should be accepted.

6. Mr. N.D.Nanavati, learned Counsel for the respondents pleaded that the order of merit or preference determined by the District Panchayat Service Selection Committee is not binding on the respondents and, therefore, the respondents were justified in treating deleted deceased respondent no.3 as senior to the petitioner, more particularly when the deceased respondent no.3 was confirmed on the post of vaccinator by an order dated April 9, 1979, though his regular selection had taken place in the year 1982. What was stressed was that the deceased respondent no.3 had joined as a vaccinator with effect from September 11, 1970 and as there was no break in his service, the respondents were justified in treating him senior to the petitioner and, therefore, the petition should be rejected.

7. I have heard the learned Counsel for the parties and taken into consideration the relevant documents forming part of the petition as well as statutory rules. In exercise of powers conferred by section 323 of the Gujarat Panchayats Act, 1961, the Government has made Rules called, "The Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964. When the recruitment to any of the posts mentioned in the Schedule is to be made by direct recruitment, the Panchayat concerned has to intimate to the Selection Committee the number of vacancies which are to be filled in and give other particulars as required by Rule-3 of the said Rules. As observed earlier, District Panchayat Service Selection Committee is constituted under section 211 of the Act. The Selection Committee after inviting applications is entitled to select the candidates as provided by sub-rule (2) of Rule-3 of the Rules. Rule 3(2)(c) which is relevant for our purpose reads as under :-

"(c) forward to the Panchayat concerned, the

names of the candidates selected according to the result of the written examination and interview, or as the case may be, for the interview only, arranged in the order of merit or preference and wherever it thinks fit, recommend advance increments in the case of any candidate giving reasons therefor."

Thus, it is clear that the Panchayat while forwarding names of the candidates selected has to arrange the selected candidates in the order of merits or preference and this arrangement is binding on the Panchayat. Though there were breaks in service of the petitioner and though there were no such breaks in the service of the deceased respondent no.3, so far as appointment to the post of vaccinator is concerned, it is relevant to notice that both of them were for the first time regularly selected in the year 1982 when their selection was made by the District Panchayat Service Selection Committee. Therefore, neither the services rendered by the petitioner nor the services rendered by deceased respondent no.3 prior to 1982 could have been taken into consideration for the purpose of determining their inter-se seniority. Moreover, by an order dated March 23, 1982, District Panchayat, Rajkot had regularised the services of the petitioner as well as deceased respondent no.3 and in the said order also, name of the petitioner was shown at serial no.2; whereas name of the deceased respondent no.3 was shown at serial no.7. Under the circumstances, I am of the opinion that there was no reason to treat the deceased respondent no.3 as senior to the petitioner. The learned Counsel for the petitioner is right in submitting that the Gujarat Civil Services Tribunal does not exercise appellate jurisdiction over determination of order of merit or preference by the District Panchayat Service Selection Committee. Therefore, the Tribunal was not justified in holding that merit list prepared by the District Panchayat Service Selection Committee was not proper, nor had it taken into consideration the candidates' experience and even the prescribed qualifications regarding passing of Sanitary Inspector's Examination by the candidates. While hearing the appeal, the Tribunal has exercised jurisdiction not vested in it making its judgment vulnerable. As observed earlier, those candidates who had not passed Sanitary Inspector's examination, were also entitled to be called for interview if the candidates having passed the Sanitary Inspector's examination were not available in sufficient number. Under the circumstances, selection of the petitioner could not have been regarded as bad in any

manner. It may be mentioned that the Secretary of the District Panchayat Service Selection Committee had addressed a communication dated February 17, 1987 to the District Development Officer, Rajkot mentioning that order of merit or preference determined by the District Panchayat Service Selection Committee is final and services rendered earlier prior to regular recruitment should not be taken into consideration while determining seniority. On overall view of the matter, I am of the opinion that the petitioner was entitled to be promoted atleast from the date on which the deceased respondent no.3 was promoted to the post of School Health Assistant and, therefore, his grievance ought to have been accepted by the Tribunal. Though I have come to the conclusion that the petitioner ought to have been promoted to the post of School Health Assistant with effect from April 12, 1985 on which date the deceased respondent no.3 was promoted to the said post, it is made clear that the promotion as well as the benefits granted to the deceased respondent no.3 are not affected in any manner and no steps be taken by the respondents to withdraw the same, but on grant of deemed date of promotion, the petitioner would be entitled to consequential reliefs.

For the foregoing reasons, the petition succeeds. The respondent no.1 is directed to consider the case of the petitioner for promotion to the post of School Health Assistant and give him deemed date of promotion with effect from the date on which the deceased respondent no.3 was promoted to the said post and give him all incidental benefits including monetary benefits flowing from the grant of deemed date of promotion as early as possible and preferably within three months from the date of receipt of writ. Rule is made absolute accordingly, with no order as to costs.

(J.M.Panchal,J.)